(1)

Supreme Court, U.S.
FILED

97 1539 MAR 11 1998

OFFICE OF THE CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

MATTHEW E. JACKSON, JR.
Petitioner,
v.

OFFICE OF DISCIPLINARY COUNSEL,
Respondent.

PETITION FOR WRIT OF CERTIORARI
Petition for a Writ of Certiorari
to the Supreme Court of Pennsylvania

Matthew E. Jackson, Jr., Esquire
P.O. Box 545
Sewickley, Pennsylvania 15143
(412) 741-1898

42 pp

QUESTION PRESENTED

I. WHETHER THERE IS ANY BURDEN ON FIRST AMENDMENT FREEDOMS, EITHER IN THE FORM OF A PRIOR RESTRAINT OR A SANCTION IMPOSED TO PROHIBIT OF PUNISH FOR THE EXERCISE OF FIRST AMENDMENT RIGHTS?

LIST OF PARTIES

MATTHEW E. JACKSON, JR.

OFFICE OF DISCIPLINARY COUNSEL

TABLE OF CONTENTS

Questions presented.....i

List of Parties.....ii

Table of Contents.....iii

Table of Authorities.....iv

Opinions Below.....1

Statement of Jurisdiction.....1

Statute Involved.....1

Statement of the Case.....1

Summary of Argument.....28

Reasons for Granting the Writ.....28

Conclusion.....30

APPENDIX

Order of Supreme Court of Pennsylvania, dated November 13, 1997.....a1

Report and Recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania.....a2

TABLE OF AUTHORITIES

Cases

Bradley v. Pittsburgh Board of Education
910 F2d 1172 (3rd Cir. 1990) 28

Gavin v. Jackson
No. G.D. 92-10729, Court of Common Pleas
of Allegheny County, Pennsylvania 13

Hoeber for and on behalf of N.L.R.B.
v. Local 30, United Slate, Tile
& Composition Roofers, Damp and
Waterproof Workers Ass. AFL-CIO
939 F.2d 118 (3rd Cir. 1991) 29

Jackson v. Disciplinary Board
No. 0030 Misc. Docket 1994 ..... 6, 7, 9, 18

Jackson v. Supreme Court of Pa
30 F.3d. 1486
130 L.Ed.2d 1067 (1995) 12, 13

Lear and Gavin v. Jackson
No. G.D. 91-08066, in the Court
of Common Pleas of Allegheny
County, Pennsylvania 8

Meyer v. Nebraska
262 U.S. 390, 399 (1923) 27

Mt. Healthy City Board of Education v. Doyle
429 U.S. 274, 97 S.Ct. 568
50 L.Ed.2d 471 (1977) 27

Patterson v. McLean Credit Union
109 SupCt. 2363 (1989).....6

Phillips v. Vandygriff
711 F.2d. 1217 (5th Cir. 1983).....27

Stewart Hannon
469 F.Supp. 1142 (ND Ill. 1979).....27

Stone v. Edward Ins. Agency, Inc.
v. Dept. of Insurance
636 A2d 304(1994).....28

Truax v. Raich
239 U.S. 33 (1915).....27

Statutes

28 U.S.C. #1257.....1

28 U.S.C.A. Const. Amends. 1.....1

28 U.S.C.A. Const. Amends. 14.....1

Enforcement Rule 208.....22

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

No opinions were officially or unofficially reported in this case by any court or administrative agency. The Pennsylvania Supreme Court entered an order summarily affirming, without comment or analysis, the report and recommendation of the Disciplinary Board of Pennsylvania. App. at a1

STATEMENT OF JURISDICTION

The judgment of the Pennsylvania Supreme Court sought to be reviewed herein was entered on November 13, 1997. The statutory provision believed to confer on the Supreme Court jurisdiction to review the judgment of the Pennsylvania Supreme Court is Title 28 U.S.C. #1257.

STATUTORY PROVISIONS INVOLVED

The statutory provision involved in this case is Title 28 U.S.C.A. Const. Amends. 1, 14. The First Amendment to the United States Constitution provides: "*Congress shall make no law . . . abridging the freedom of speech . . .* " The Fourteenth Amendment provides: "*. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

STATEMENT OF THE CASE

Matthew E. Jackson, Jr. is an attorney of African-American descent, admitted to practice in Pennsylvania in 1974. In 1975, Jackson was hired by the University of Pittsburgh. William Hannan was director of the department. Ronald Talarico was a staff attorney. Under Hannan, the university let the attorneys spend university time on personal work.

Sullivan replaced Hannan in January 1983. In March 1983, Sullivan gave Jackson a 17% salary increase and told him that the university prohibited the attorneys from doing outside work.

One year later, Sullivan fired Jackson. The next day, Sullivan was soliciting complaints about Jackson's work and boasting that

he was going to ruin Jackson's reputation and destroy him. Sullivan and two white former coworkers, Talarico and Frank, pulled documents from files and created a file. Sullivan sent a secretary to the offices of university's employees with this file folder. The secretary stood there and took the file when these employees finished reading it. Jackson did not know what was in the file or what caused this assault. There was nothing adverse in Jackson's personnel file. Jackson filed a grievance. Sullivan bypassed Jackson's attorney and harassed him at home, with strange letters and telephone calls. Sullivan stole $3,000.00 from Jackson's bank account. He wrote, saying he would return it if Jackson dropped his grievance. (Record on appeal 686-694, 794-842).

In 1984, the University of Pittsburgh was the largest employer in Pittsburgh, Pennsylvania. It was notorious for its mistreatment of black and female employees and students. Disproportionally few blacks were on the faculty. Few of those were eligible for tenure. Most of its black employees did social work, as if blacks could only relate to other blacks. Each year, the university received over $800 million in state and federal grants, contracts and student loans. In exchange for those public funds, the university agreed to comply with the laws prohibiting racial discrimination.

Every administrative agency Jackson complained to was indifferent to his legal rights. An attorney for the Disciplinary Board, Napoli, quickly dismissed Jackson's disciplinary complaint against Sullivan. There was no hearing. He misstated the rules. Someone obstructed the Office of Federal Contract Compliance and Equal Employment Opportunity Commission investigations.

In February 1985, Jackson sued the University of Pittsburgh, its president Wesley Posvar and Sullivan in the United States District Court for the Western District of Pennsylvania. His lawsuit alleged federal civil rights violations and the state law torts of defamation, invasion of privacy and fraud. He requested a jury trial.

The university fired Sullivan on the day Jackson served the complaint. The district court assigned Jackson's lawsuit to Senior Judge Edward Dumbauld. Martha Munsch of Reed Smith Shaw & McClay represented the university. During discovery, Munsch

badgered Jackson, seeking information about his private practice and his clients, before the university hired Sullivan. She wanted to know if Jackson ever got any fees from Dickie, McCamey & Chilcote or any other law firm. Jackson's attorneys objected. What did this line of questioning have to do with Sullivan firing him? The university authorized Jackson to have a private practice, just like Hannan and Talarico. Sullivan did not work for the university when Jackson had a private practice.

Discovery showed that Sullivan lied to Jackson when he said the university prohibited the attorneys from having private practices. Sullivan gave Talarico a 30 per cent salary increase and allowed him to continue operating his private practice. This was racial discrimination. Munsch objected and would not let Talarico answer any questions about his private practice.

Among the documents in the file Sullivan let the university employees read was a memo Sullivan wrote to "file", dated March 1983. Sullivan wrote that he learned from a secretary, Claire Stawson, and Talarico, that Jackson got a $100,000.00 fee from a private case he worked on. The memo did not say what it had to do with the university. What struck Jackson was that Sullivan wrote the "memo" when his abuses and exploitation started. This racial assault had nothing to do with Jackson's university work. It evolved around Reed Smith Shaw & McClay.

Jackson had been an attorney for the plaintiffs in a lawsuit working with the law firm of Dickie, McCamey & Chilcote. Reed Smith Shaw & McClay represented a defendant in that lawsuit, after the previous defense counsel withdrew because of a conflict of interest. The case settled in 1982, before the university hired Sullivan. The court sealed the terms of the settlement. Jackson later learned that Basinski, the attorney from Reed Smith Shaw & McClay, was the son-in-law of Jackson's lead attorney, David Fawcett of Dickie, McCamey & Chilcote.

Wolfe of Reed Smith Shaw & McClay was on the university's Board of Trustees, along with Ruggierio Aldisert, Chief Judge of the Third Circuit Court of Appeals. Wolfe and Aldisert selected Sullivan to replace Hannan as the university's attorney. Reed Smith Shaw & McClay had competing self interests, as the university's attorney and director. They were incapable of giving advice in the best interests of the university. This case shows how

dangerous conflicts of interest are.

In August 1985, the university filed a motion for summary judgment. They did not mention the lawsuit involving Reed Smith Shaw & McClay, which provoked this racial assault, as the reason for firing Jackson. Instead, the university listed what they called Jackson's "twelve performance deficiencies." Jackson filed a motion for summary judgment against the university, Sullivan and Posvar, since they did not give truthful, nondiscriminatory reasons for his discharge.

During the first eighteen months, Dumbauld ignored everything presented to the court. In 1986, when Jackson notified the court that he fired an attorney, Dumbauld immediately dismissed all six counts of Jackson's lawsuit. The excuse Dumbauld used to enter summary judgment and deny Jackson a trial was that all of the facts favored the university. He did not say what the facts were or cite any specific incident. Stripped of its deceptive semantics, his opinion is nothing more than a statement of power and oppression that favored white men over all others. The opinion was encoded with Dumbauld's prejudices of race and sex. Only because a white male had the power to force his experiences and views of superiority, was his statements even considered objective or rational when, in fact, it was subjective, irrational rhetoric. It was the way things were and the way Dumbauld wanted them to be.

A year later, the Third Circuit Court of Appeals reversed the summary judgement. Judge Leon Higgenbottom wrote that the record showed evidence that the University of Pittsburgh's "twelve performance deficiencies" [criticisms of Jackson's work] were "post hoc concoctions [lies]." The court found evidence that "Sullivan orchestrated a campaign to get rid of [Jackson] because he is black." A "factfinder reasonably could conclude that the university's position is mere pretext.

The appeals court dismissed Jackson's motion for summary judgment. It also dismissed his state law claims for invasion of privacy, defamation and fraud, because he had not appealed Dumbauld's dismissal of those claims.

Part II

In 1987, Napoli, the lawyer from the Disciplinary Board who

would not investigate Sullivan's unethical conduct and theft of $3,000.00 from Jackson, started an investigation of Jackson, based on a disciplinary complaint from an attorney named Frank Little. Little complained that a judge opened a lawsuit, after Little falsified court records to enter a default judgment against Jackson's client.

When Jackson's lawsuit returned to the district court, he filed a motion for Dumbauld's recusal. Dumbauld was predisposed, as far as racial issues were concerned. Dumbauld said that he would deny the recusal motion, as if Jackson's concerns did not merit his time.

For the next four years, Dumbauld delayed the trial. Every time Jackson checked Dumbauld's schedule, it showed "chamber work." While Jackson waited for Dumbauld to act, this racial assault went from his employment at the university to his law practice. Jackson was vulnerable because of his status as a lawyer, under the control of the Pennsylvania Supreme Court.

"The tyranny of Philadelphia and Pittsburgh over the state court system has resulted in corruption of the system, and the attorney discipline system has become politicized." Robert B. Surrick, Coalition for Real Judicial Reform, West Chester, Pa.

In 1985, the Pennsylvania Supreme Court hired Mark G. Weitzman, as an Assistant Disciplinary Counsel. Simultaneously, Weitzman was one, of nine, paid, elected council members in Wilkinsburg, a borough of 21,000 next to Pittsburgh. He was first elected in 1985. He was reelected in 1989. Weitzman was also a Democratic ward committeeman. As a party committeeman, Weitzman collected money for the Democratic party, delivered votes for party candidates and got government jobs for his constituents. Typically, lawyers work for a political organization in order to win a nomination to a judgeship, or some other high office. Lawyers often start their political careers as a district committeeman. They become a member of or hold a position in municipal or county government, hoping to get the endorsement of the political bosses.

In 1988, Weitzman became the "investigator" and prosecutor in cases involving Jackson. He worked full-time harassing, fabricating allegations and bringing formal disciplinary charges against Jackson, for anyone who did or did not complain. Each

formal disciplinary charge involved an individual who was either attempting to avoid paying for Jackson's services or who had already stolen his time and services. In each case, Weitzman acted as if the client's debt did not exist. The board did not follow its own rules and policies. Though it does not have jurisdiction over fee disputes and it is not a court of law for contractual disputes, the board charged Jackson with disciplinary violations when the only issue was the client's failure to pay fees or comply with the terms of the contract.

Weitzman delayed the Little investigation, keeping Jackson from getting a magistrate's position the mayor selected him to fill. Little and and the co-plaintif, A. Kenneth Mann [the Wilkinsburg magistrate] were Weitzman's constitutents.

In 1989, after a year of "investigating", Weitzman brought disciplinary charges for two clients, Hurt and Owens-El. Hurt disputed everything Weitzman alleged Hurt alleged. Weitzman did not present any evidence, supporting the disciplinary charges he brought for Owens-El. Obviously, the message Jackson was supposed to get was to forget about suing the University of Pittsburgh.

Dumbauld emerged, briefly, in September 1989, to dismiss part of Jackson's University of Pittsburgh lawsuit. In his second order since Jackson sued in 1985, he granted the university's motion for partial summary judgment, after the decision in Patterson v. McLean Credit Union, 109 Sup.Ct. 2363 (1989). He dismissed Jackson's claim brought under 42 U.S.C. #1881 and his request for a jury trial. He limited the lawsuit to a Title VII claim and the remedy to back pay, without compensatory or punitive damages. Dumbauld still had not responded to Jackson's recusal motion, filed more than a year earlier.

In 1989, Family Court Judge Wettick [a University of Pittsburgh professor] stripped Jackson of all custody rights, without a hearing. He did not follow the proper procedures. Jackson sued Wettick, in federal court, for violating due process rights. That lawsuit was the first lawsuit against a state court judge, in Pittsburgh's federal court, since 1955. Either the state court had not violated anyone's constitutional rights in 34 years or the lawyers were too intimidated to sue. After that, twenty-two individuals sued the state court judges. Eventually, the

disparity of power quashed these challenges. The deluge of chalienges made Jackson a target.

Wettick retaliated against Jackson for suing him. He staged a contempt hearing and Family Court employees contacted a newspaper reporter, Lawrence Walsh, who published private information about Jackson's two children. Juvenile delinquents received better treatment from the press than Jackson's children who had done nothing at all.

In January 1990, a new disciplinary rule went into effect. It required attorneys to put contingent fee agreements in writing. Weitzman started fabricating oral contingent fee agreements for deadbeat clients. In early 1990, Weitzman and an attorney/constituent named Gross harassed and embarrassed Jackson with breaches of confidentiality about his so-called "disciplinary troubles", until Jackson sent the Rawlings file to Gross, without the Rawlings making any arrangements to pay their bill. A week later, Weitzman ignored the written agreement the Rawlings signed and said they had an "oral contingent fee agreement." An attorney, Wendell Freeland, held an unauthorized bar association hearing and decided that the Rawlings did not owe Jackson any fees. Jackson sued the Rawlings and got a judgment against them for the outstanding bill.

In May 1990, Weitzman, who knew that Jackson had a May 4, 1990 hearing for a client, subpoenaed Jackson to be at a disciplinary hearing [more Hurt/Owens-El] on May 4, 1990. Jackson's client's, Gavin's, hearing, which was fifty miles away, could not be rescheduled. It was the last scheduled hearing in a workers compensation case that had been going on for over a year. Jackson, a sole practitioner, asked Weitzman to reschedule his hearing. Weitzman said "tough." Jackson went to Weitzman's hearing, for fear of being disciplined for not being there. Weitzman's hearing caused Jackson to miss Gavin's hearing.

Jackson won Gavin's worker's compensation case, despite Weitzman's interference. Jackson had been working for Gavin for about three years. Gavin failed to make arrangements to pay his bill. Jackson notified Gavin that he placed a retaining lien on his money, files and property. Gavin filed a disciplinary complaint, but Weitzman did not notify Jackson of it. Instead,

Weitzman solicited disciplinary complaints from Gavin's friends, Robert Lear and Alvin Teets. Weitzman was investigating why Jackson did not win Lear's lawsuit. Lear's testimony at the trial, that he did not believe that there was religious discrimination, prompted the judge to dismiss his lawsuit. Teets had once hired Jackson to write a letter. That was the extent of his relationship to Teets.

Jackson sued the state court employees, Judge Wettick, the newspaper reporter and the Pittsburgh Press, over their publicity stunt involving his children. The district court assigned this lawsuit to Dumbauld, the same judge who dismissed Jackson's University of Pittsburgh lawsuit because he did not like discrimination lawsuits and who had been delaying the trial for the past six years. Jackson was still waiting for Dumbauld to deal with his recusal motion, three years after he presented it to him.

In 1991, Weitzman brought the novel disciplinary charge of "a failure to immediately deliver the Rawlings' file." Of course, he ignored the Rawlings' unpaid legal bill and Jackson's retaining lien, avoiding the fundamental fact that the Rawlings were not entitled to their file.

By May 1991, Weitzman had Gavin, Lear, and Gavin's coworker, William Sutton, suing Jackson in a "pro se class action." They alleged that Jackson violated unspecified disciplinary rules, as told to them by Weitzman. Lear and Gavin v. Jackson, No. G.D. 91-08066, Court of Common Pleas of Allegheny County, Pa.

Three related events occurred on July 1, 1991. 1) Posvar, after a series of scandals and disclosures of mishandling university funds, announced his retirement from the University of Pittsburgh, effective in thirty days. 2) Timothy Lewis replaced Paul A. Simmons, the first Black judge in the district court for western Pennsylvania. 3) Dumbauld, after seven years of procrastination, ordered Jackson to give the University of Pittsburgh all of Jackson's financial, income and client records for his entire legal career, i.e., sixteen years, within thirty days.

The law required valid, legal reasons before Dumbauld could order such a gross intrusion upon Jackson's privacy and violate the attorney-client privileges of Jackson's clients. Dumbauld gave three false reasons to justify this order.

The first lie. Dumbauld said that, under Sullivan [1983], the

university prohibited the attorneys from having a private practice. He wrote that the university needed all of Jackson's records, before Sullivan came to the university and after he left the university, to see if Jackson had a private practice while he worked for Sullivan. The reasoning was absurd. The entire premise was false. Jackson's research showed that Talarico and Sullivan both had outside employment. The university only prohibited Jackson from having a private practice. Had Jackson been white, this lawsuit would have ended six years earlier, with a summary judgment against the university for this racial discrimination.

The second lie. Dumbauld's order said that the university needed the information to discover Jackson's damages for defamation. Dumbauld dismissed those claims in 1986.

The third lie. Dumbauld wrote that the university needed to discover Jackson's damages for violations of Title VII. In 1989, Dumbauld limited Jackson's Title VII claim to back pay from the university. Title VII had nothing to do with Jackson's private practice.

Obviously, Reed Smith Shaw & McClay wanted Jackson's records for the lawsuit involving Reed Smith Shaw & McClay. Dumbauld knew what they wanted and lied to help them get it. Why they wanted this information is anybody's guess. It was just as obvious that they did not plan to have a trial about racial discrimination. They expected Jackson to sit quietly, like an imbecile, while they litigated whether he ever used the privilege reserved exclusively for the two white employees in the office.

On August 8, 1991, Jackson filed a petition in the Third Circuit Court of Appeals, for a writ of mandamus, seeking to disqualify Dumbauld and vacate his July 1, 1991 order.

Supposedly, these cases are assigned to judges by secret ballots. According to the district court's records, a committee gave Jackson's lawsuit to Lewis on the same day the Third Circuit got his petition for a writ of mandamus. Jackson learned of the transfer a month later. In September 1991, Jackson got a letter from Lewis' law clerk. She said that Lewis wanted to hold a status conference on September 19. Jackson had a state court trial on that day. Jackson wrote to her, advising of his scheduling conflict. Lewis never responded to Jackson's letter. He never

scheduled the status conference. He called Jackson's office, on September 18. Jackson was not in the office. He knew that Jackson could not be available on September 19.

In law, perception is important. Lewis' conflicts of interest created the appearance of impropriety. A June 19, 1991 newspaper article, entitled "Point Breeze Native Awaits Swearing-in as Federal Judge," said that Lewis credited Wendell Freeland, "a dear friend of mine," "important in his career," his "godfather" and "mentor," with helping Lewis get the appointment. Freeland was a member of the University of Pittsburgh's Board of Trustees, served on the Disciplinary Board and the Allegheny County Bar Association. Freeland had been involved with Weitzman in the Rawlings harassment. The press identified Freeland as "Elsie Hillman's close friend and personal lawyer." Elsie Hillman's husband, Henry Hillman, was a member of the university's Board of Trustees. Elsie Hillman, had been the state's Republican national committeewoman representing Pennsylvania for the Republican party, since 1975. "It became a political axiom that Pennsylvania Republicans seek Elsie's support before attempting to secure political appointments."

At the next status conference, Jackson presented a motion to recuse Lewis, because of his relationnship with Freeland. Lewis denied Jackson's recusal motion. Lewis told Munsch to ask for sanctions, because Jackson was not there on September 19. He ordered Jackson to pay Reed Smith Shaw & McClay $574.00, as a sanction.

When he became a judge, on July 1, 1991, the federal district court gave Lewis two other University of Pittsburgh civil rights lawsuits, Kramer and Jones. Martha Munsch and Thomas McGough, Jr., [former law clerk to United States Supreme Court Justice William Rehnquist] of Reed Smith Shaw & McClay, represented the university in the those lawsuits. David Jones was a lawyer, [white], former University of Pittsburgh professor of Criminal Justice who sued for civil rights violations. Mary Kramer, a Ph.D. student, also sued the university for civil rights violations. It seems unnecessary to mention the outcome of those lawsuits.

In October 1991, after a status conference in the Jones lawsuit, a video tape camera caught Lewis having a private conversation

with McGough. Apparently, they did not know they were still being taped. They discussed the lawsuit filed by Mary Kramer. Munsch had substituted for McGough at a previous status conference. Lewis told McGough how Munsch failed to pick up on his cue when he wanted her to ask him to rule in a certain manner.

The Third Circuit Court of Appeals denied Jackson's petition against Dumbauld. It did not notify him for three weeks. It did not deal with the issues Jackson raised in the petition.

At the next status conference, Jackson asked Lewis what Dumbauld's order had to do with his lawsuit. Jackson was concerned that it was for malicious reasons. The order did not give Jackson any protection against abuses. When they passed Sullivan's file about Jackson around the university, Dumbauld said it was "necessary to protect the image of the university." Lewis would not say what the order had to do with the lawsuit. Since there was no legitimate explanation for the order. Jackson asked Lewis to rescind the order. Lewis would not rescind the order. Jackson had no choice. Jackson told Lewis that he would not comply with Dumbauld's order.

The three-year Hurt/Owens-El ordeal ended, when the board dismissed those disciplinary charges. The board criticized Disciplinary Counsel for interfering with Jackson's contract with Hurt. It overlooked the false affidavits Weitzman filed in those proceedings.

In November 1991, the board held the Rawlings disciplinary hearing. Weitzman did not have any facts supporting his allegations. The hearing committee dismissed the Rawlings' disciplinary charges. As Jackson left the hearing, Weitzman served him with his Lear petition for discipline.

When the state court dismissed the Gavin/Lear/Sutton class action lawsuit against Jackson, Weitzman convened an "investigatory hearing" for Judith Hunt, the court reporter in Gavin's workers' compensation case. Weitzman was investigating $150.00 that Gavin gave Jackson for a hearing transcript. The issue had already been decided [res judicata]. The referee ordered Gavin's employer to pay for Hunt's transcripts. The employer paid for the transcript, more than a year earlier. Jackson sent Weitzman the referee's order and proof that PPG

had already paid for Hunt's transcript. To show Weitzman why he had placed a retaining lien against Gavin's $150.00, Jackson sent Weitzman a copy of Gavin's outstanding bill, his canceled checks and receipts for advances out of pocket expenses made for Gavin. Jackson v. Supreme Court of Pa, supra., (3rd Cir. App. at 389)

Two months later, in January 1992, Weitzman informed Jackson that he opened a separate investigation for Gavin. He was supposedly investigating why Jackson missed Gavin's May 4, 1990 hearing. Weitzman already knew that he kept Jackson from that hearing. The rules required Hunt and Gavin's complaints "be disposed of in one investigation", since they involved the same set of facts. Obviously, Weitzman's real purpose was avoiding Gavin's unpaid bill and Jackson's retaining lien.

In January 1992, Lewis dismissed Jackson's University of Pittsburgh lawsuit with prejudice, as a sanction for not obeying Dumbauld's false order. They turned false information into a completely bogus theory and then into a full-blown plan of action.

Jackson had been spending countless hours defending against Weitzman's groundless disciplinary charges and feeling the strain of racial prejudice. Jackson worked in a fixed state of confusion. He had no idea what was considered a disciplinary violation. Any presumption that Weitzman lied and harassed Jackson for an innocent reason is illogical. Whether self appointed or chosen in league with the University of Pittsburgh, Weitzman acted to obstruct Jackson's lawsuit and to intimidate him.

Part III

Jackson sued Weitzman and the state court in the United States District Court for the Eastern District of Pennsylvania, since the main office of the Pennsylvania Supreme Court is in Philadelphia. In April 1992, the court sent the lawsuit back to Pittsburgh, because most of Jackson's allegations involved Weitzman. Lewis presided over Jackson's lawsuit against Weitzman. [No. 92-0452]

Weitzman continued "investigating" and "prosecuting" Jackson while Jackson sued him. Apparently, they expected Jackson to believe Weitzman was being objective while Jackson sued him for fabricating disciplinary charges.

In April 1992, the board held the Lear disciplinary hearing. Before the hearing, Jackson tried to get the names of the additional witnesses Weitzman alleged could prove Lear was a victim of religious discrimination. Weitzman refused to give Jackson their names. The hearing showed why he would not produce the names. The alleged witnesses did not exist. On cross examination, Lear said that Weitzman told him to say that there was an oral contingent fee agreement. Jackson v. Supreme Court of Pa, 30 F.3d 1486 (1995)(App. at 390-394)

In April, Doherty informally admonished Jackson, following Weitzman's investigation of Teets' complaint. Under their procedures, Jackson was supposed to have ten days to reject their offer of informal admonishment, as voluntary discipline. Otherwise, it was an admission of wrongdoing. Jackson did not receive this notice in the Teets case. The alleged disciplinary violation: Teets' telephone bills showed 14 calls to Jackson's office in 14 months.

The harassment for the month of May 1992 was Brian Kline, a process server for Weitzman, rushing by Jackson's receptionist and going directly to Jackson's office. When Jackson hung up the telephone, Kline giggled and handed Jackson a letter from Weitzman. The letter said that he was investigating a complaint from Richard Rishell. Rishell was a client who failed to comply with the terms of his contract with Jackson.

Munsch filed a motion to dismiss Jackson's appeal of Lewis' dismissal of the University of Pittsburgh lawsuit, as a sanction. Obviously, Munsch could not explain the Dumbauld/Lewis order, because there was no legitimate explanation for it. She avoided that issue with a ludicrous argument. Again, Reed Smith Shaw & McClay's special privileges came into play. In June 1992, Chief Judge Soliviter dismissed Jackson's appeal, saying Jackson grossly violated the Rules of Appellate Procedure. [No. 92-3082]

After Gavin filed his fourth amended complaint, in August 1992, the state court dismissed Gavin's lawsuit, with prejudice. Gavin v. Jackson, No. G.D. 92-10729, in the Court of Common Pleas of Allegheny County, Pa.

In July 1992, Benson ruled on the motion to dismiss, filed by Weitzman, et al in Jackson's lawsuit. Benson recommended dismissal of Jackson's claims against the Pennsylvania Supreme

Court, the Disciplinary Board and Disciplinary Counsel, saying they had governmental immunity. He ignored Jackson's request for injunctive relief. Though Jackson alleged specific instances of racial discrimination, Benson dismissed those claims, calling them "bald allegations." He held that "harassment, defamation, and loss of potential future business opportunities" do not violate the U.S. Constitution and dismissed those claims. He recommended that Jackson's lawsuit continue against Weitzman and Davis, for malicious prosecutions. Lewis ratified Benson's recommendations.

In October 1992, President Bush promoted Lewis to the Third Circuit Court of Appeals, replacing Judge Higgenbottom, who retired. The district court reassigned Jackson's lawsuit against Weitzman, et al. to Ziegler. Ziegler was serving as Chairman of the Ethics Committee for the Allegheny County Bar Association. Jackson did not learn of his conflict of interest, until after Ziegler had already done his damage.

Weitzman and Davis did not answer Jackson's complaint. Zeigler did not permit discovery. Weitzman and Davis filed a motion for summary judgment, exactly one year from the date Jackson sued them. Normally, courts of law do not consider the trite statements Weitzman presented as evidence. He filed an affidavit, in which he said that he never lied. Weitzman certainly was not going to admit that he lied. Weitzman announced that he had been promoted to Senior Attorney. He said that, to become Senior Attorney, he had to bring five formal prosecutions. He had brought five formal disciplinary proceedings against me. Weitzman and Davis' exhibits were the same documents Jackson alleged to be false and misleading.

Clients had given Jackson copies of letters they got from Disciplinary Counsel, when they complained about other lawyers. The same things for which Weitzman and the board brought formal disciplinary charges against Jackson, Disciplinary Counsel told others, who complained about attorneys, were not violations of the disciplinary rules. They routinely dismissed those complaints, without any investigation. Jackson submitted these exhibits.

Disciplinary Counsel's letters said they did not get involved in fee disputes. However, each complaint Weitzman "investigated"

and prosecuted was a fee dispute. The letters said that attorneys have the right to exercise retaining liens. Weitzman always interfered with Jackson's retaining liens.

A glaring example was the Gavin case. Weitzman made an exhibit of portions of his Gavin report and recommendation to the board. Among other relevant missing documents were the documents Jackson gave him for his "investigatory hearing" in November 1991: Gavin's outstanding bill, Jackson's canceled checks, receipts, etc. Weitzman's exhibit said he opened Gavin's complaint to investigate why Jackson was not at Gavin's May 4 hearing. Weitzman did not report that he kept Jackson from that hearing. He reported that Jackson's absence was "unexplained." Since he was already "investigating", Weitzman decided to resolve Gavin's fee dispute with Jackson. Weitzman ignored Jackson retaining lien and business records. Instead of reporting the facts, he reported to the board that Gavin did not owe Jackson any fees. Weitzman recommended that the board dismiss Gavin's disciplinary complaint, because Jackson's absence, from Gavin's May 4 hearing, did not prejudice Gavin.

On July 23, 1993, Benson recommended summary judgment against Jackson. He ignored everything Jackson filed in opposition to Weitzman's motion for summary judgment. He even ignored the written statements made by Disciplinary Counsel that directly contradicted the statements in Weitzman's affidavits and exhibits. Benson's report said that complaints from Jackson's clients verified Weitzman's statements. There were no complaints from any clients in the record. Benson wrote that Jackson was "found to have violated disciplinary rules, and received discipline" in the Gavin and Lear cases. His statements were patent falsehoods. Both cases were dismissed. Obviously, they had only used the lawsuit, to cover up Weitzman's misconduct. They changed the facts, to justify summary judgment.

Jackson filed objections to Benson's report and recommendation. Zeigler did not rule on the objections. Benson amended his report [sua sponte], recommending that the court decline to decide the issue of probable cause in disciplinary proceedings. Jackson's lawsuit, he said, did not rise to the level of a federal constitutional violation. October 22, 1993: Jackson got an order from Ziegler which said that judgment had been

entered because no objections were filed. Jackson filed a motion, requesting that Ziegler open the judgment and decide the objections he filed, as required by law. The next day Ziegler denied Jackson's objections, without addressing any issue.

In Pennsylvania, whistleblowers are persecuted. For example, in 1987, Supreme Court Justice Rolf Larsen tried to influence a case, pending before Common Pleas Court Judge Eunice Ross. Judge Ross reported Larsen's misconduct to the Judicial Board. After that, the court ostracized Ross. It transferred her to another section of the court. Private investigators scrutinized her. She was falsely accused of sexual misbehavior, improper judicial conduct and political chicanery. [The Philadelphia Inquiry] [Pittsburgh Post Gazette, October 9, 1994]

Justices Ralph Cappy and Stephen Zappala voted to reprimand Larsen for the Ross incident, Larsen countered by filing documents accusing Zappala and Cappy of promoting political candidates, receiving kickbacks, meeting ex parte with litigants, advising them how to direct their cases to them and appointing judges in Philadelphia to do their "bidding." Criminal charges were brought against Larsen, for having his office staff buy prescription drugs for him. The State legislature initiated impeachment proceedings against Larsen.

"Once some reforms are introduced and the courts powers are deduced, the bar may be willing to be critical of the justices in public." [Pittsburgh Post Gazette, October 9, 1994]

In May and June 1993, before Benson recommended the dismissal of Jackson's lawsuit against Weitzman, a client informed Jackson that a woman from the Office of Disciplinary Counsel contacted him. Twice, she had solicited complaints from him about Jackson. They had contacted six other individuals, soliciting complaints about Jackson. Disciplinary Counsel promised to initiate negative publicity and told Jackson's clients to file class action lawsuits against me. This was the same pattern shown with Gavin and Lear. Jackson v. Disciplinary Board, No. 0030 Misc. Docket 1994

Three days after Benson issued his report, the retaliation started. On August 6, 1993, Jackson got a letter from Weitzman, dated July 26, 1993, saying that he had "just completed his [two year] investigation of the Judith Hunt complaint." Weitzman and

Doherty verified the petition for discipline. The petition did not identify whether the alleged complainant was Gavin or Hunt. It alleged that Jackson missed Gavin's May 4, 1990 hearing, without mentioning that Weitzman kept Jackson from that hearing. The petition said that Jackson promised to pay $150.00 for a transcript and failed to do so. It does not mention Jackson's [three year old] retaining lien against Gavin. They concluded by charging that Jackson committed fraud.

Lynn Marks, of Pennsylvania for Modern Courts, posed what is a central question. "How would you feel if you were a litigant before them [Pennsylvania Supreme Court] right now?" "Personally, I can't imagine it and that really worries me."

Weitzman had brought five disciplinary prosecutions, without reason, responsibility, guidance or restraint. In each case, he lied under oath. Implicit in each disciplinary action was the racist attitude that Jackson was not worth being paid for my work. Jackson suffered indignities on a daily basis. Weitzman harassed by telephone, leaked information, slandered through rumor and innuendo, abused the subpoena process and helped individuals get out of paying for Jackson's work. Jackson could not demand respect from clients, other lawyers or judges because of Weitzman's constant denigrating, professional attacks. Clients knew that they could use Weitzman to avoid paying their bill. Jackson was spending all of his time defending against Weitzman's unfounded charges and feeling the strain of racial prejudices.

Jacksom tried to file a Petition for Extraordinary Relief with the Pennsylvania Supreme Court. They let Jackson know how the "system" works. The Prothonotary in Pittsburgh refused to file it. She said to file it in Philadelphia. Jackson mailed the petition to the Prothonotary in Philadelphia and had a copy delivered to the hearing panel, consisting of James R. Reehl, chairperson, Lawrence M. Kelly and David Ridge, before the hearing.

Three days later, the hearing committee sent a process server to Jackson's home to hand-deliver a letter, written by Angelea Mitas, who substituted for Weitzman. Mitas, speaking on behalf of the hearing committee, wrote that they held the hearing without Jackson. She told Jackson that he had ten days to file his petition in the state Supreme Court. Mitas spent the next few

days harassing Jackson with process servers, regular and certified mail and faxes of this same letter. Then, the Prothonotary, in Philadelphia, sent Jackson's petition back to him. He said to file it in Pittsburgh. That was where Jackson originally tried to file it. Jackson filed the petition in Pittsburgh.

On May 10, 1994, Weitzman lost the Democratic primary election for the Pennsylvania House of Representatives for Allegheny County's 34th District.

In May 1994, Jackson got a letter from the prothonotary of the Supreme Court of Pennsylvania, notifying him that the state Supreme Court denied his Petition for Extraordinary Relief. On the same day, Jackson got a brief from Mitas for the Hunt [or Gavin] hearing committee. Among the documents she omitted were the order for Gavin's employer to pay Hunt's transcripts and the employer's paying for it. Jackson brought the omissions to the attention of the hearing panel. Mitas wrote to the hearing panel, telling them to ignore her omissions. Jackson v. Disciplinary Board, supra.

In June 1994, the Third Circuit Court of Appeals denied Jackson's appeal of the summary judgment, entered by Ziegler in his lawsuit against Weitzman and Davis. They did not address the evidence showing that Disciplinary Counsel did not bring charges against attorneys for the same things for which they brought charges against Jackson. The opinion said that Disciplinary Counsel did not need any probable cause to bring formal disciplinary charges against attorneys.

In September 1994, the Hunt [or Gavin] hearing committee recommended that Jackson be subjected to public censure. They did not cite one legal authority in their entire report and recommendation. They either omitted or lied about the facts, e.g., Gavin's lawsuits (res judicata), the referee's order (res judicata), the fact that the transcript was already paid for (mootness) and Jackson's retaining lien. Jackson appealed the decision to the board.

Justice Larsen's criminal trial started on March 18, 1994, the same day as the Hunt [or Gavin] formal disciplinary hearing. Larsen's criminal trial cost the public more than one million dollars. On June 13, 1994, he was convicted on two counts of using his office staff to buy his prescription drugs for him.

Common Pleas Judge Terrence O'Brien removed Larsen from the bench. In October 1994, the state legislature found Larsen guilty of an improper contact, in 1988, with Richard Gilardi, a Pittsburgh attorney who was the former chairman of the Disciplinary Board. Larsen became the first justice of the Pennsylvania Supreme Court removed from office by impeachment, in more than 180 years. [Pittsburgh Post Gazette, June 12, 1994]

Obviously, Jackson got caught in the middle of that vicious Supreme Court scandal. They were not going to touch Jackson's petition and they certainly were not going to look into any problems in the court system.

Stephen Gillers, an ethics professor at New York University, told the Pennsylvania Law Journal, "Perhaps the unprecedented [Larsen/Zappala/Cappy] episode gives the people of Pennsylvania an opportunity to reconsider whether they want to select members of the judiciary in another way - perhaps by appointments, rather than election, as in New Jersey." "You know you're down when New Jersey looks up." Id at 136

In October 1994, Jackson filed a petition for a writ of certiorari in the United States Supreme Court, questioning the decision of the Third Circuit in his lawsuit against Weitzman, et al. Jackson told the court that there is no civil rights enforcement in Pittsburgh.

During the same month, someone left an envelope under the door to Jackson's office suite. The envelope contained a dirty, wrinkled "petition for discipline" in the Rishell case, prepared by Mitas. Jackson's attorney complained to the board, but they never responded to her letter.

In February 1995, the United States Supreme Court denied Jackson's petition for a writ of certiorari. This eliminated all of the safeguards of constitutional law that protected Jackson's livelihood. The state court gained even more of a sense of entitlement. As they felt more entitled, Jackson suffered more denigration and exploitation. They knew that they could do whatever they want to Jackson or his family if he disagreed with their tactics.

February 22, 1995: The Rishell hearing committee, consisting of Jan Reid Van Gorder, Diane Barr Quinlan and Michael J.

Supinka, held the a hearing. In 1985, a written agreement required Jackson to represent Rishell in a medical malpractice lawsuit against a hospital and two surgeons. Rishell agreed to advance costs, witness fees and expenses. Jackson waited seven years for Rishell to advance the funds, before dropping the lawsuit. No. 95DB94(Ex. A, PE14)

Mitas started by lying about service of the petition. The first "red herring" issue was answers to interrogatories, which Jackson filed, in 1987, more than thirty days after they were served. Mitas spent most of the morning distorting this routine matter. Her witness, who had no knowledge about this motion, testified about how Jackson jeopardized Rishell's lawsuit by not filing those answers within the original thirty day period. Later, this same witness said the judge would have given Jackson as much time as he needed to get an expert witness, though they had been waiting seven years for Jackson to answer their discovery seeking information from this expert. From reading the interrogatories, it is obvious that Rishell had just moved from Pittsburgh to Florida. They wanted the names of Rishell's new doctors in Florida. Rishell had to find new doctors before Jackson could tell them who they were. The same docket sheet, which showed their motion, showed that Jackson had filed the same motion against them. Their motion was a reaction to Jackson's motion.

Mitas digressed to an allegation that Rishell only advanced funds [$1,500.00] for costs. On cross examination, Rishell said the allegation was not true. He said part of the money was to pay for other work Jackson did for him. Mitas then wasted time on a mysterious inheritance Rishell supposedly got, without ever providing any facts about the inheritance. Rishell said he never told Jackson about the inheritance. This testimony may have been to show that Rishell could have paid for the expert witness, though he never did.

Van Gorder gave Jackson minimum time to present a defense. He ordered Jackson not to rebut anything that happened before 1988, i.e. the motion that Mitas wasted half a day questioning the witness about. Jackson objected. Van Gorder overruled the objection. He even prevented Jackson from calling Rishell as a witness. Van Gorder would not let Jackson make an exhibit of a copy of a $1,700 check Rishell sent him and the postmarked

envelope. Mitas' evidence which had been duly admitted by Van Gorder was an undated check book stub, which proved nothing.

Jackson dug up ten years of old telephone bills, refuting Mitas allegations that Jackson did not return Rishell telephone calls. Jackson's bills showed that he initiated most of the telephone calls to Rishell and that he always returned Rishell's calls.

After the hearing, Mitas announced when to file briefs. They spent over $1,000.00 for the transcript, more than twice what it should have cost. The court reporter, Wenger, tampered with the evidence by doctoring what occurred at the hearing. She deleted all statements showing Van Gorder obstructing Jackson's testimony about the 1988 motion. She omitted all of the objections Jackson made during the hearing. Jackson's exhibit, showing the cost of the expert, is not in the record. She omitted Van Gorder's preventing Jackson from calling Rishell as a witness. Jackson filed a motion to correct the transcript. Mitas wrote a letter, telling the hearing committee to ignore his motion and his brief. The hearing committee ignored Jackson's motion. N.T. 163

In July 1995, the board did not convene a quorum. Instead, they acted without jurisdiction. The chairman and vice chairman, Powell and Friedman, of the Disciplinary Board personally handled this Hunt [or Gavin] decision. They did not cite any law in the entire report. They simply made up their own laws.

The board prevented Jackson from being at Gavin's workers compensation hearing. No matter. They disciplined Jackson for not being there, with Marroletti writing, "in passing" that Jackson missed Gavin's hearing. The State Supreme Court prevented Jackson from filing the petition for extraordinary relief. These three board members said Jackson's petition was not timely filed. Three years before the hearing, and a year before Weitzman started "investigating", the referee ordered Gavin's employer to pay for Hunt's transcripts. The issue was res judicata. These three board members said that Jackson committed fraud because he did not pay for the transcript. They said that neither Hunt nor Gavin was ever paid, though they knew that the transcript was paid for. They disregarded Jackson's retaining lien against Gavin and wrote that Jackson should have paid the $150.00 to Gavin. They wrote vaguely about inexplicit matters, without giving

Jackson any notice. They did not provide any facts. These three board members lied about Jackson filing a lawsuit, alluding to something about another "forum." Apparently, they did not want to draw attention to the petition for a writ of certiorari Jackson filed in the United States Supreme Court.

"Dishonesty has become so institutionalized in Pennsylvania that everyone seems to be in an amazing and continuous state of denial." Keisling, William, When the Levee Breaks (Yardbird 1993), p. 67 They denied the existence of racism in the disciplinary system and laughed off the fact that a black attorney had anything to fear from them. Jackson was just another dysfunctional African-American. They did not explain their own bizarre, irrational behavior. They denied the existence of corruption and politics in the disciplinary system. They called Jackson a "liar", without any facts supporting this offhanded slander. They knew that Jackson could not challenge their falsehoods. The rules did not permit him to file a brief to the state Supreme Court. Then, they suspended Jackson for a year and one day and fined him $1,054.00. They did not follow the proper procedures for suspending an attorney. See Enforcement Rule 208.

On August 31, 1995, Judge Monemurro signed an order, rubberstamping their recommendation. Mitas wrote to the Rishell hearing committee, telling them to withhold their decision until after Jackson applied for reinstatement.

On September 6, 1995, Ziegler issued a Rule to Show Cause why an identical order of suspension should not be issued by the federal district court. Jackson filed an Answer to the Rule to Show Cause.

In October 1995, Jackson filed another petition for a writ of certiorari in the United States Supreme Court. Disciplinary Counsel's reply did not state facts or address the constitutional violations raised in Jackson's petition. They said that Jackson did not "specify at what stage of the proceedings in the Pennsylvania Supreme Court [he] raised the federal questions or how the "claim" was treated in the state court." On December 4, 1995, the United States Supreme Court denied Jackson's petition for a writ of certiorari. Thus, they took Jackson's liberty and pursuit of happiness, violated his First Amendment rights and the justices

could not have read his petition. Nobody ever told Jackson that the United States Constitution was suspended.

In January 1996, all nine federal district court judges, Ziegler, Alan N. Bloch, William L. Standish, D. Brooks Smith, Donald J. Lee, Donetta W. Ambrose, Gary L. Lancaster, Robert J. Cindrich, and Sean J. McLaughlin, signed the order suspending Jackson for a period of one year and one day. They did not write an opinion.

The January 1996 Pennsylvania Law Journal reported that disciplinary action had been taken against two attorneys, from the entire population of approximately 25,000 lawyers in Pennsylvania. Jackson was one of the two attorneys. The other attorney was Jones who had sued the University of Pittsburgh. After Lewis dismissed Jones' lawsuit, the gestapo for the judiciary went after Jones. They revived old disciplinary complaints that they had previously told Jones were dismissed. The Board found Jones guilty of disciplinary misconduct and disbarred him.

On January 2, 1996, Jackson appealed Ziegler's order. On August 13, 1996, the Third Circuit Court of Appeals sent Jackson's appeal of the federal court suspension back to the district court. The appeals court said that some of Jackson's complaints cast doubt on the validity of the state court's suspension. It could not make a decision because the district court did not write an opinion. The appeals' court judges had the same information before them as the district court judges. If the suspension was improper, they should have rescinded it. The intimidation factor kept the issue from going forward. [No. 95-3715]

All nine district court judges ignored the appeals' court order. Jackson's case deserved a timely and respectful review by the judges.

In December 1996, after four months, Jackson petitioned the Third Circuit to order the district court to decide the issues, as mandated. Zeigler issued an order on the day Jackson filed the petition and said the eight other judges agreed with him. In keeping with the pattern, Zeigler did not deal with any of the facts or address any legal issue. He repeated the slander of Marroletti, Friedman and Powell, calling Jackson a "liar", without even suggesting what lie Jackson ever told. He even wrote that

Jackson never raised the issue of res judicata to the Gavin claims. Every document, showing that Weitzman lied and conspired to bring these formal disciplinary charges and every legal issue, was part of the record in Jackson's lawsuit against Weitzman. Obviously, Zeigler never looked at that record.

From the malice Zeigler's opinion shows, one would presume that he knew Jackson. Jackson has never met Ziegler. All along, Jackson said this harassment was because of the University of Pittsburgh lawsuit. Zeigler came up with new "reasons" for Jackson's suspension. Zeigler said that Jackson sued the University of Pittsburgh and Wettick. He did not state facts. Jackson was not aware of anything he did that was unethical in those cases. Those lawsuits show a lawyer with limited resources trying to penetrate the complex dealings of secretive public officials armed with unlimited coercive powers. Jackson has never met most of the other judges who signed the order. Clearly they did not want to know the truth. They were covering up for Dumbauld and Lewis. The opinion shows what is meant by the phrase: "When men have no moral justification for their conduct, they invent one." Jackson filed another appeal to the Third Circuit Court of Appeals.

Consistent with the pattern, the board retaliated, because Jackson had almost been sucessful in his appeal to the Third Circuit. In the event Jackson won, they needed something else to use against him. The Rishell hearing committee disobeyed the directive from Mitas that they delay their Rishell decision until Jackson applied for reinstatement. Their report and recommendation does not contain one legal citation. Jackson's rights were measured by a legally binding contract. They did not even mention the contract. They ignored Jackson's motion to correct the transcript.

Van Gorder's restricting Jackson's testimony was a set up. He lied to Jackson, when he said that the hearing committee was not going to consider anything that occurred before 1988. Four (4) of the hearing committee's findings are based on what Van Gorder told Jackson they were not going to consider when he prevented Jackson from testifying about the 1988 motion. Jackson's documentary evidence was unrebutted by Disciplinary Counsel. The hearing committee ignored all of Jackson's

evidence and his testimony. They recommended that Jackson be required to attend ethics courses at the University of Pittsburgh. Jackson appealed the decision to the board.

Jackson got a new Third Circuit panel for his appeal of Zeigler's order. They ignored the previous Third Circuit ruling. Zeigler's order insinuated that Jackson did something improper in the University of Pittsburgh lawsuit and in the Wettick cases. Jackson dug out ten year old files and spent much time addressing what occurred in those cases. The Third Circuit opinion does not even mention the University of Pittsburgh case or the Wettick case. The risk was that, if Jackson had not written a response to Zeigler's baseless innuendo, they may have reconstructed that history. The decision is more of the vague rhetoric that circumvents fact and law. It is clear that all of the effort, research and faith Jackson put in the court system is pointless. These individuals are unreasonable, arrogant and irrational and it is useless arguing law before them. For fourteen years, Jackson tried to use the civil rights laws to protect his right to earning a living. There has not been one decision, in fourteen years, that has dealt with the facts or the law. Like all other human beings, blacks require a sense of personal dignity. Nowhere in the court system did Jackson find his dignity as a human being respected.

The board rendered a decision on Jackson's appeal of the Rishell decision. It concluded that Jackson violated rules 1.3, 1.4(a), 1.4(b) and 1.15(b).

Rishell involved a simple contract issue, i.e. whether Rishell did what he promised to do. The report does not follow the contract. These are several findings of the board that are not supported by any evidence.

The board concluded that Rishell did not know the cost of the espert. In April and May 1986, Jackson wrote letters to Rishell, identifying the expert witness and enclosing the contract to be signed with the expert and related documents. The contract required Jackson to sign it. In August 1986, Rishell agreed to advance $10,000.00 for the expert. Rishell never advanced the $10,000.00. In 1988, Jackson notified Rishell that the case was on the trial list. (N.T. 173, 186)(Ex. A; PE 14)(Ex. B-F) The schedule of fees is missing from the record.

The board concluded that Rishell only advanced funds for the medical expert. There is nothing in the record to support that conclusion. The board does not say how Jackson paid for the depositions and other discovery. In addition, in 1985 and 1986, Jackson represented Rishell in several other legal matters. Rishell paid Jackson from the $1,000.00. (N.T. 142-146, 186, 184-196) Rishell testified that he received annual statements from Jackson, detailing the monies spent. (N.T. 142-146)

The board found that Jackson called Rishell in the early summer of 1989. Jackson's telephone records do not show any calls to Rishell in early summer of 1989. The board concluded that Jackson did not speak to Rishell for over a year. Jackson's telephone bills showed 28 telephone calls he made to Rishell, during the period of March 1987 through July 1991. Mitas produced a copy of Rishell's telephone bill for October, November and December 1990. Jackson's records show that he returned Rishell's calls promptly. (Exhibits 16b, 16c, 16d)(Exhibits G,)(N.T 249)

The board found that Rishell sent a $1,700.00 check in August 1990. Jackson testified that, on March 19, 1990, Rishell sent a check for $1,700.00. Jackson tried to fsubmit a copy of the check and postmarked envelope as an exhibit but the commitee refused to allow it. Mitas produced an undated check book stub which became an exhibit. Rishell did not know when he sent it. The board suggest that this payment was sufficient to pay for a medical expert. There is nothing in the record to support that conclusion. Mitas called Koczan as an "expert." Mitas never asked Koczan about the cost of hiring a medical expert witness. They did not offer any evidence showing the cost of the expert. Jackson's testimony is the sole evidence on the issue of the cost of a medical expert. Jackson would have been responsible for the expert fees had he hired an expert as the board required. The contract was legally designed to protect Jackson from having to use his own funds. It is the task of the interpreting court to conform the contract with the intent of the parties at the time of the contract. Marine Midlands Realty Credit Corp. v. LLMD of Michigan, Inc., 821 F. Supp. 370 (1993) (N.T 155) (N.T. 100)(Exhibit 36) (N.T. 207-212)(Ex. H)

The board concluded that Rishell did not know what was going

on in his lawsuit in April 1991. In early 1991, Rishell consulted a Pittsburgh law firm about the lawsuit. The firm charged him $250.00, to review the case and declined to represent him. There is no evidence that Rishell ever telephoned Jackson in 1991. Jackson called Rishell on March 17, 1991. (Exhibit 38, 39).

There is no legal principle which supports the conclusion he reached. In fact, the rules prohibit attorneys from doing what the board expected Jackson to do.

Their board failed to address the issue of tampering with the transcript. The board recommended public censure and that Jackson be required to pay costs of $2,540.99. On November 13, 1997, the Pennsylvania Supreme Court ratified the recommendation with an Order.

Federal questions were raised in Respondent's Brief on Exceptions and Brief opposing exceptions to the Disciplinary Board of Pennsylvania. Jackson set forth the following federal questions to the Board.

1. The right to earn a livelihood is protected by the Fourteenth Amendment of the Constitution of the United States. Phillips v. Vandygriff, 711 F.2d. 1217 (5th Cir. 1983); Truax v. Raich, 239 U.S. 33; Meyer v. Nebraska, 262 U.S. 390, 399 (1923); Stewart v. Hannon, 469 F.Supp. 1142 (N.D. Ill. 1979).

2. Under the First Amendment, subsequent punishments too can present an infringement of First Amendment rights. Bradley v. Pittsburgh Board of Education, 910 F.2d 1172, 1186 (3rd Cir. 1990) citing Mt. Healthy City School District v. Doyle, 429 U.S. 274, 283-287, 97 S.Ct. 568, 574-576, 50 L.Ed2d 471 (1977)

3. The Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States apply to the states. United States v. Guest, 383 U.S. 745, 88 S.Ct. 1170, 16 L.Ed. 239 (1966).

5. Due process violations occur when the governmental official carrying out the adjudicative function holds direct, personal, substantial, pecuniary interest in the outcome of the proceeding. U.S.C.A. 5, 14; Lee Hospital v. Cambria County Board of Appeals, 638 A2d 344, 162 Pa. Cmmwlth 38, appeal

discont. 648 A2d 791, 538 Pa. 661 (1994)

6. Due process rights not only can be violated when there is actual commingling but, even when appearance that commingling of functions may have taken place within the agency. Const. Art. 1, ##9, 11; Stone v. Edwards Ins. Agency, Inc. v. Dept. of Ins., 636 A2d 293, 161 Pa. Cmmwlth 177, opinion affirmed, order affirmed 648 A2d 304, 538 Pa. 276 (1994)

The Disciplinary Board of Pennsylvania and the Supreme Court of Pennsylvania did not address Jackson's federal questions.

SUMMARY OF ARGUMENT

Pennsylvania has serious problems and much of it can be attributed to the climate and apathy, a feeling that you can do anything and get away with it.

REASONS FOR GRANTING THE WRIT

Sometimes, there are forces at work on judges that may not be obvious in any particular opinion but appear in a line of cases over a period. This may be denied by the judges but the line of cases shows an obvious absence of objectivity in the interpretation of the law and in the treatment of litigants.

The Civil Rights Act of 1964 represented the embarassment of white Americans that the United States was most notorious, internationally, for its racism. It was with strong backing from whites that this law was passed. The Act made it unlawful to engage in racial discrimination in making employment decisions. Clearly this was a positive step toward dealing with the problems created by racism.

There remained, however, a privileged group of individuals, angry over legislated changes giving minorities access to economic benefits. The people in their social world were of their own kind. The businessmen with whom they dealt were like them. They saw Pittsburgh as a friendly, neighborly city and a pleasant place to live. They had been looking forward to the great possibilities that lied ahead for them. They wanted the country to go back to the stability and common sense, regulated by them and people like them.

After being unsuccessful in preventing civil rights' legislation, Pittsburgh's aristocracy simply used their vast resources to take control of the political system. Their efforts to keep the black demons of affirmative action out of jobs which whites might want became more deliberate, more organized and more spiteful. Rather than stand out among the great numbers of decent people condemning racism, their methods of discrimination changed to make the bigotry more difficult to detect. The real test came when individuals tried to use the civil rights laws to protect their jobs.

The filing of a lawsuit carries significant constitutional protections implicating the First Amendment right to petition the Government for redress of grievances and the right of access to the courts. Hoeber for and on behalf of N.L.R.B. v. Local 30, United Slate, Tile & Composition Roofers, Damp and Waterproof Workers Ass. AFL-CIO, 939 F.2d 118 (3rd Cir. 1991)

There is a pattern of conduct that is prejudicial to the effective and expeditious administration of justice, orders that disproportionately affect plaintiffs ability to pursue lawsuits and the deliberate prevention of cases from being litigated.

In Jackson's case, the city's largest employer, the city's largest law firm, the most powerful judges in the United States and the state's most powerful court combined their resources against Jackson, an individual black man. They obstructed Jackson's lawsuit against the university, created much confusion in his law practice, publicly ridiculed him and destroyed his career. Jackson's constitutional right of access to the courts was unlawfully impaired by threats, harassment and retaliation.

Throughout this ordeal, Weitzman was employed by the Court in violation of the Hatch Act, which prohibits state employees whose agencies receive federal funds from engagin in any political activity. Its purpose is to keep government employees from practicing political justice and to avoid the appearance of political abuse. Weitzman, with political ambitions, did whatever he could to help his chances for a nomination. When the political bosses needed a favor, he responded quickly, knowing that his political career depended on how he responded to requests for political favors. From the Pennsylvania Supreme Court and Disciplinary Board's perspective, they are doing something good by retaliating

for Weitzman. When you are dealing with someone who is defenseless, like Jackson, you can go beyond what is reasonable without the fear of having to accept responsibility for the abuses.

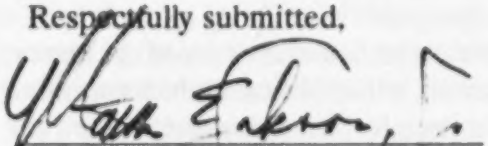
There is a tacit acceptance of the state Supreme Court's unbridled power. It is the kind of power that can intimidate a lawyer or anyone. They can take as long as they want to harass a lawyer out of his profession. As that power continued unchecked, it has become a modern day inquisition. The Disciplinary Board has become a tribunal established by the state Supreme Court with wide powers of suppression. It searches out heretics instead of acting within the law. It is a form of justice that dispenses injustices. It violates all standards of justice and few people criticize its methods. It is driven by politics and there is no doubt that it is being abused by those who have ruined Jackson's career. It is apparent that the courts are being controlled by private interests, disguised as justice. Jackson was suspended for doing what other lawyers routinely do. The state Supreme Court and its staff, who now know that they can do whatever they want to a lawyer or his family if he disagrees with their tactics.

The Constitution forbids the placing of burdens on First Amendment freedoms, either in the form of a prior restraint or a sanction imposed to prohibit or to punish the exercise of First Amendment rights. Bradley v. Pittsburgh Board of Education, 910 F.2d 1172, 1186 (3rd Cir. 1990)

CONCLUSION

For the reasons set forth above, Petitioner requests that the Court grant the petition for a Writ of Certiorari.

Respectfully submitted,



Matthew E. Jackson, Jr., Esquire
P.O. Box 545
Sewickley, Pennsylvania 15143
(412) 741-1898

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY
COUNSEL NO. 95 DB 94
Petitioner Attorney Registration No.
20147

v.

MATTHEW E. JACKSON, JR. (Allegheny County)
Respondent.

REPORT AND RECOMMENDATION OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, The Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

Office of Disciplinary Counsel filed a Petition for Discipline against Respondent, Matthew E. Jackson, Jr., on September 15, 1994. The Petition alleged that Respondent engaged in misconduct with respect to a medical malpractice action he undertook on behalf of his clients, the Rishells, in violation of Rule 1.3, 1.4(b), and 1.15(b). Respondent filed an Answer on November 15, 1994.

A hearing was held on February 22, 1995 before Hearing Committee 4.16 comprised of Chair Jan Reid Van Gorder, Esquire and Members Diane Bar Quinlan, Esquire, and Michael J. Supinka, Esquire. Respondent was represented by Velma Jackson, Esquire. Petitioner was represented by Angelea Allen

Mitas, Esquire. The Committee filed a preliminary report on March 7, 1995 and found a prima facie violation. After briefs were filed to the Committee by the parties, the Committee filed a final report on February 28, 1997 and recommended that after Respondent is reinstated from a suspension in another case, he be placed on probation for six months and take an ethics course.

Petitioner filed a Brief on Exceptions on March 20, 1997 and contends that Respondent must receive separate discipline for this matter, and he should be subject to at least public censure. Respondent filed a Brief on Exceptions and Opposing Exceptions on April 9, 1997 and contends that the Petition for Discipline should be dismissed.

This matter was adjudicated by the Disciplinary Board at the meeting held on June 25, 1997.

II. FINDING OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is now located at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), with the power and the duty to investigate all matters involving the alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Matthew E. Jackson, Jr., Esquire was born in 1944 and was admitted to practice law in the Commonwealth of Pennsylvania in 1974. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. On February 20, 1995, Mr. and Mrs. Rishell (hereinafter the Rishells) executed a Contingent Fee Agreement with Respondent for his representation in a medical malpractice action arising from the alleged improper diagnosis and treatment of Mr. Rishell's heart condition. (PE 14; N.T. 82)

4. On or about July 8, 1995, Respondent filed a Complaint in Trespass on behalf of the Rishells against Presbyterian University Hospital, Paul B. Nelson, M.D. and Bernard A. Grumet, M.D. (hereinafter referred to as Presbyterian University Hospital, Dr. Nelson and Dr. Grumet, docketed at No. GD 85-5995, in the Court of Common Pleas of Allegheny County. (PE 1; PE 2: NT 24)

5. Through their respective attorneys, Presbyterian University Hospital, D. Nelson and Dr. Grumet, filed Answers to the Complaint. (PE 1; N.T. 25)

6. Upon request by Respondent, Mr. Rishell issued a check to Respondent dated July 1, 1985, in the amount of $188.50, designated for reimbursement of monies Respondent had expended in filing suit and acquiring medical records. (PE 15a; N.T. 84)

7. Upon request by Respondent, Mr. Rishell issued a check dated December 18, 1985, in the amount of $1,000.00 to the Respondent, for anticipated costs and expenses in retaining a medical expert, and designated thereon for Respondent's escrow account. (PE 15b; N.T. 85)

8. Upon request by Respondent, Mr. Rishell issued a check dated December 31, 1986, in the amount of $500.00, for anticipated costs and expenses in retaining a medical expert, and designated thereon for Respondent's escrow account. (PE 15b; N.T. 85)

9. In about January, 1987, the Rishells moved from New Brighton, Pennsylvania, to Lutz, Florida, and notified Respondent of their new address. (N.T. 80, 88)

10. On April 21, 1987, counsel for Dr. Grumet served supplemental Interrogatories on Respondent as counsel for the Rishells. (PE 21; N.T. 28)

11. By letter dated May 27, 1987, counsel for Dr. Grumet

requested that Respondent respond to those Interrogatories by June 11, 1987. (PE 21; N.T. 28)

12. Respondent did not file an Answer to the Interrogatories by June 11, 1987. (N.T. 30)

13. By Order of Court dated July 10, 1987, the Honorable Stanton Wettick ordered that the supplemental Interrogatories directed to Mr. Rishell be answered within thirty (30) days from the date of the issuance of the Order, or Mr. Rishell would be barred from introducing at the time of trial any and all evidence pertaining to his physical and mental condition. (PE &; N.T. 30-31)

14. Some time between July 10, 1987 and July 15, 1987, Respondent submitted Answers to the supplemental Interrogatories. (N.T. 32)

15. In or about the early summer months of 1989, Respondent telephoned Mr. Rishell and discussed with him questions of a kind similar to those set forth in the Interrogatories. (N.T. 91)

16. Subsequent to his telephone conversation with Respondent, in the early summer months of 1989, Mr. Rishell made numerous attempt to contact Respondent by telephone, without success. (N.T. 92-93)

17. By letter sent to Respondent in May, 1990, Mr. Rishell requested a status report on his case, as well as an accounting of funds he provided Respondent. (N.T. 94)

18. Respondent did not reply to Mr. Rishell's letter of May, 1990. (N.T. 99)

19. Sometime after May,1990, but prior to September, 1990, after he was able to contact Respondent by telephone, Mr. Rishell issued to Respondent Check number 1645 in the amount of $1,700.00 for anticipated costs and expenses in retaining a

medical expert. (PE 36; N.T. 100-101)

20. Check number 1645, in the amount of $1,700, was received by Respondent. (N.T. 207)

21. On August 23, 1990, Attorney Paula Koczan, on behalf of Dr. Grumet, served Respondent with a third set of Interrogatories and Requests for Production. (PE 24; PE 41; N.T. 37-38)

22. Respondent did not answer the third set of Interrogatories and Requests for Production, nor did he discuss or review them with Rishells. (N.T. 40, 91)

23. On November 2, 1990, Attorney Koczan mailed to Respondent a copy of a Motion to Compel Discovery, along with a notice that said Motion would be presented to the Court on November 9, 1990. (PE 25; N.T 41)

24. Respondent did not notify the Rishells of, or discuss with them, his receipt of that Motion to Compel Discovery. (N.T. 92, 110-111)

25. On November 9, 1990, Judge Wettick issued an Order of Court which required the Rishells to submit verified Answers to Dr. Grumet's third set of Interrogatories and Requests for Production within fifteen (15) days of the date of the Order, or suffer sanctions. (PE 8; N.T. 45-46)

26. Respondent did not notify the Rishells of, or discuss with them, the issuance of Judge Wettick's November 9, 1990 Order or its ramifications. (N.T. 92, 110-111)

27. Respondent did not comply with Judge Wettick's November 9, 1990 Order.

28. By letter dated November 14, 1990, Mr. Rishell informed Respondent that this was his second written request for information regarding his case, that he had been unable to contact Respondent for the past several months without success,

and that he wanted Respondent to advise he and his wife of the status of his representation and provide them with an accounting. (PE 17, N.T. 111-112)

29. Respondent did not reply to Mr., Rishell's November 14, 1990 letter. (N.T. 114, 251)

30. Between December 1990, and April, 1990, the Rishells attempted to contact Respondent by telephone to determine the status of their case. (N.T. 118-119)

31. Respondent did not return any of their telephone calls. (N.T. 119)

32. On January 25, 1991, Attorney Koczan mailed to Respondent a copy of a Motion for Sanctions, with notice that the Motion would be presented on February 1, 1991. (PE 27; N.T. 50)

33. On February 1, 1991, Judge Wettick issued an Order directing Plaintiffs to comply with his prior Order of Court dated November 9, 1990 within thirty (30) days, and awarding attorney's fees to counsel for Dr. Grumet. (PE 9; N.T. 51)

34. Respondent did not comply with the February 1, 1991 Order of Court. (N.T. 56)

35. Respondent did not inform the Rishells of the February 1, 1991 Order of Court, or discuss with them its ramifications. (N.T. 119)

36. On March 5, 1991, Attorney Koczan mailed to Respondent a copy of a subsequent Motion for Sanctions, with notice that the Motion would be presented to the Court on March 8, 1991. (PE 30; N.T. 56)

37. On March 8, 1991, no one appeared on behalf of the Rishells, and Judge Wettick issued an Order of Court prohibiting them from introducing at the time of trial any expert testimony

and any and all medical records, hospital records, or hospital bills. (PE 10; N.T. 56-57)

38. Respondent did not inform the Rishells of the Order of Court issued by Judge Wettick on March 8, 1991, or its ramifications. (N.T. 119)

39. Respondent spoke with Mr. Rishell by telephone in April 1991 and informed him that approximately $1,200 of his money remained in Respondent's escrow account, apologized for not contacting him, and advised him that the case was in jeopardy but not why, and that he wanted to drop the case. (N.T. 119-120, 132)

40. During their April, 1991 telephone conversation, Mr. Rishell told Respondent that he wanted to meet with him to discuss the case. (N.T. 120)

41. During that April, 1991 telephone conversation, Respondent told Mr. Rishell he would travel to Florida during the Memorial Day weekend to meet with them. (N.T. 121)

42. By letter dated May 30, 1991, Respondent informed the Rishells that he was experiencing difficulty in scheduling his trip to Florida, that he had arranged for a flight to Tampa, to arrive on July 13, 1991, and that they should advise him if that was inconvenient. (PE 18; N.T. 122)

43. Shortly after receipt of that letter, Mr. Rishell advised Respondent that the July 13, 1991 meeting date was convenient. (N.T. 130)

44. Respondent did not meet with the Rishells in Florida on July 13, 1991, or at any time thereafter. (N.T. 129)

45. Respondent did not contact the Rishells in any manner to explain his absence from the pre-arranged meeting scheduled for July 13, 1991. (N.T. 130)

46. After July 13, 1991, Respondent did not telephone the Rishell, or otherwise communicate with them about their malpractice action. (N.T. 130-132)

47. On September 3, 1991, Attorney Koczan presented to Judge Horgos a Motion for Summary Judgment on behalf of Dr. Grumet; it was granted on that day. (PE 1; N.T. 60)

48. On September 10, 1991, counsel for defendants in the medical malpractice action filed Praecipes for Entry of Judgment against the Rishells. (PE1)

49. Respondent did not contact the Rishells in any manner to inform them of the Motion for Summary Judgment, the resulting Order of Court, or the Entry of Judgment against them. (N.T. 131-132)

50. Respondent did not provide the Rishells with a full accounting of the monies they paid him. (N.T. 131-132)

51. Respondent has a prior record of discipline consisting of an Informal Admonition administered on November 9, 1992 and a one year and one day Suspension ordered on August 31, 1995. The basis for the Suspension was Respondent's repeated failure to remit $150.00 to a stenographer, which monies he originally received from his client for this purpose.

III. CONCLUSION OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1,3 -(Failing to act with reasonable diligence and promptness in representing a client);

2. RPC 1.4(a) - (Failing to keep a client informed about the status of a matter and failing to promptly comply with reasonable requests for information);

3. RPC 1.4(b) - (Fail;ing to explain a matter to the extent

necessary to permit a client to make informed decisions regarding the representation); and

4. RPC 1.15(b) - (Failing to promptly deliver to a client or third person any funds or other property that a client or third person is entitled to receive and, failing to promptly render a full accounting regarding such property, upon request by a client or third person).

IV. DISCUSSION

This matter is before the Board on a Petition for Discipline filed against Respondent on the basis of his actions in a medical malpractice case brought on behalf of Richard and Ruth Rishell. The record indicates that Respondent began work on the case in 1985 and oursued it diligently on behalf of Richard and Ruth Rishell. He conducted discovery by way of depositions of both the Rishells and defendant doctors. Interrogatories had been submitted and answered by various parties. After that time, he stopped working on the case. He failed to answer a third set of Interrogatories and Requests for Production, and failed to acknowledge receipt of these pleadings or review them with his clients. He failed to appear in court to defend motions filed by the defense as a result of Respondent's inactivity. Sanctions were obtained against Respondent which resulted in prejudice to his clients' case. Respondent failed to account for the disposition of monies supplied to him for expenses, although he was requested to do so by his clients. Respondent's actions violated Rules 1.3, 1.4(a), 1.4(b), and 1.15(b).

The Committee determined that Respondent violated the above Rules; however, it decided that since Respondent was currently on suspension for violations in a separate case, it would not impose a separate discipline. Instead, the Committee recommended that if Respondent is reinstated from the one year and one day suspension, he should serve a six month period of probation and take an ethics course as a sanction for the instant case. The Committee's attempt to craft a considerate sanction is well-meaning, but such sanction is not appropriate under the Rules of Disciplinary Enforcement. In effect, the Committee is conditioning Respondent's discipline in this matter on his future

reinstatement.

Two problems arise pertinent to this recommendation. The first issue is that conditional reinstatement is not provided for by the Rules of Disciplinary Enforcement. The Rules do not permit this because when an attorney is granted reinstatement, he or she has already shown moral fitness, competence and learning in the law and is fit to practice law in Pennsylvania. A requirement of probation or an ethics class after reinstatement negates the previous demonstration of fitness to practice. Also, the language of the Committee's recommendation is such that Respondent may never be sanctions for his violations in the instant case if he decides not to petition for reinstatement or his reinstatement is denied.

The second issue is that the Committee attempted to dovetail discipline in this case with a sanction imposed in a separate and distinct matter. While the Committee appropriately considered Respondent's suspension in In re Anonymous No. 81 DB 93, 29 Pa. D & C 4th 101 (1995) as an aggravating circumstance, it was not appropriate to combine the sanctions. The circumstances of the case in which Respondent was suspended have nothing to do with the facts of the instant case. To make Respondent's reinstatement in that case provisional on receiving probation for this case, even if such a scheme was permitted under the Rules, is not logical. Since the Committee found that Respondent violated Rules of Professional Conduct, it should have recommended separate discipline for his misconduct.

There are several prior cases addressing misconduct similar to that in the instant case. In the case of In re Anonymous No. 24 DB 89, 8 Pa. D & C 4th 207 (1990), an attorney failed to take any action in an estate matter and misrepresented the status of the case to the client. The attorney had a prior history of discipline, including a two year suspension that had been imposed during the pendency of No. 24 DB 89. The Board recommended a one year suspension consecutive to the two year suspension. The Supreme Court affirmed this recommendation. The facts of the cired case are more egregious than the instant case, as Respondent herein proceeded accordingly on the case for five years, then stopped. Also, the attorney in the cited case violated Rules involving misrepresentation and conduct adversely

reflecting on his fitness. Respondent herein was not charged with any similar violations. In the case of In re Anonymous No. 128 DB 91, 23 Pa. D & C 4th 360 (1994), an attorney failed to keep the client informed about the case, failed to transfer the file, failed to provide an accounting, and failed to return the unearned portion of the retainer fee. The attorney had a prior history of discipline consisting of three informal admonitions, one private reprimand, and a six month suspension. After considering these factors, the Board recommended and the Court approved a six month period of suspension. In the case of In re Anonymous No. 47 DB 91, 18 Pa. D & C 4th 418 (1993), an attorney failed to act with diligence in pursuing a case and failed to return the entrusted property after termination of representation. She had a prior history of two private reprimands and one informal admonition. She presented very strong character testimony at her hearing. The Board imposed a private reprimand. The cited case is less serious that the instant case, as the attorney's prior history was less serious.

Review of the case law suggests that many of the case resulting in suspension involve violations of Rule 8.4, which subsections address misrepresentation, dishonesty, conduct prejudicial to the administration of justice, and criminal acts that reflect on the attorney's fitness as a lawyer. A finding of a Rule 8.4 violation demonstrates the presence of more serious misconduct and increases the severity of the resulting displinary sanction. The instant case does not involve such misconduct. A case involving violations of Rules 1.3, 1.4(a), 1.4(b), and 1.15(b), with no aggravating circumstances, would normally warrant a less severe sanction than a suspension, perhaps private discipline. Respondent's prior history of a one year and one day suspension and an informal admonition aggravates the circumstances of this case and changes the nature of it.

The totality of the circumstances in this matter warrant a sanction of a public censure. This is an appropriate sanction considering the misconduct involved and Respondent's prior history.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania

recommends that the Respondent, Matthew E. Jackson, Jr., receive a Public Censure from the Supreme Court of Pennsylvania.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

Bt: William R. Caroselli, Member

Date: September 11, 1997

CERTIFICATE OF SERVICE

This certifies that on _____, 1998, a true and correct copy of the within brief was transmitted to the person listed below, by first class mail, as follows:

Angelea Allen Mitas
Assistant Disciplinary Counsel
Suite 400, Union Trust Building
501 Grant Street
Pittsburgh, Pennsylvania 15219

_____

Matthew E. Jackson, Esquire
P.O. Box 545
Sewickley, Pennsylvania 15143
(412) 741-1898

CERTIFICATE OF SERVICE

This certifies that on 2-11, 1998, a true and correct copy of the within brief was transmitted to the person listed below, by first class mail, as follows:

Angelea Allen Mitas
Assistant Disciplinary Counsel
Suite 400, Union Trust Building
501 Grant Street
Pittsburgh, Pennsylvania 15219

Matthew E. Jackson, Esquire
P.O. Box 545
Sewickley, Pennsylvania 15143
(412) 741-1898

FILE COPY

Supreme Court, U.S.
FILED

97 1539 MAR 11 1998

OFFICE OF THE CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

MATTHEW E. JACKSON, JR.
Petitioner,
v.

OFFICE OF DISCIPLINARY COUNSEL,
Respondent.

SUPPLEMENTAL APPENDIX
to
PETITION FOR WRIT OF CERTIORARI
Petition for a Writ of Certiorari
to the Supreme Court of Pennsylvania, Western District

Matthew E. Jackson, Jr., Esquire
P.O. Box 545
Sewickley, Pennsylvania 15143
(412) 741-1898

16 pp

TABLE OF CONTENTS
to
SUPPLEMENTAL APPENDIX

Order of Supreme Court of Pennsylvania,
dated November 13, 1997.....A1

Report and Recommendation of the
Disciplinary Board of the Supreme
Court of Pennsylvania.....A2

Certificate of Service

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF	)
DISCIPLINARY COUNSEL	)NO. 372 Disciplinary
Petitioner	)Docket No 3 -Supreme
	)Court
v.	)No 95 DB 94 Disciplinary
MATTHEW E. JACKSON, JR.	)Board
Respondent.	)Attorney Registration
	)No. 20147
	)(Allegheny County)

ORDER

PER CURIAM

AND NOW, this 13th day of November, 1997, upon consideration of the Report and Recommendation of the Disciplinary Board dated September 11, 1997, it is hereby

ORDERED that MATTHEW E. JACKSON, JR., be subjected to PUBLIC CENSURE by the Supreme Court.

It is further ORDERED that Respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa. R.D.E.

Chief Clerk

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	) NO. 95 DB 94
Petitioner	) Attorney Registration
	) No. 20147
v.	)
MATTHEW E. JACKSON, JR.	) (Allegheny County)
Respondent.	)

REPORT AND RECOMMENDATION OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, The Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

Office of Disciplinary Counsel filed a Petition for Discipline against Respondent, Matthew E. Jackson, Jr., on September 15, 1994. The Petition alleged that Respondent engaged in misconduct with respect to a medical malpractice action he undertook on behalf of his clients, the Rishells, in violation of Rule 1.3, 1.4(b), and 1.15(b). Respondent filed an Answer on November 15, 1994.

A hearing was held on February 22, 1995 before Hearing Committee 4.16 comprised of Chair Jan Reid Van Gorder, Esquire and Members Diane Bar Quinlan, Esquire, and Michael J. Supinka, Esquire. Respondent was represented by Velma Jackson, Esquire. Petitioner was represented by Angelea Allen Mitas, Esquire. The Committee filed a preliminary report on

March 7, 1995 and found a prima facie violation. After briefs were filed to the Committee by the parties, the Committee filed a final report on February 28, 1997 and recommended that after Respondent is reinstated from a suspension in another case, he be placed on probation for six months and take an ethics course.

Petitioner filed a Brief on Exceptions on March 20, 1997 and contends that Respondent must receive separate discipline for this matter, and he should be subject to at least public censure. Respondent filed a Brief on Exceptions and Opposing Exceptions on April 9, 1997 and contends that the Petition for Discipline should be dismissed.

This matter was adjudicated by the Disciplinary Board at the meeting held on June 25, 1997.

II. FINDING OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is now located at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), with the power and the duty to investigate all matters involving the alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Matthew E. Jackson, Jr., Esquire was born in 1944 and was admitted to practice law in the Commonwealth of Pennsylvania in 1974. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. On February 20, 1995, Mr. and Mrs. Rishell (hereinafter the Rishells) executed a Contingent Fee Agreement with Respondent for his representation in a medical malpractice action arising from the alleged improper diagnosis and treatment of Mr. Rishell's heart condition. (PE 14; N.T. 82)

4. On or about July 8, 1995, Respondent filed a Complaint in

Trespass on behalf of the Rishells against Presbyterian University Hospital, Paul B. Nelson, M.D. and Bernard A. Grumet, M.D. (hereinafter referred to as Presbyterian University Hospital, Dr. Nelson and Dr. Grumet, docketed at No. GD 85-5995, in the Court of Common Pleas of Allegheny County. (PE 1; PE 2: NT 24)

5. Through their respective attorneys, Presbyterian University Hospital, D. Nelson and Dr. Grumet, filed Answers to the Complaint. (PE 1; N.T. 25)

6. Upon request by Respondent, Mr. Rishell issued a check to Respondent dated July 1, 1985, in the amount of $188.50, designated for reimbursement of monies Respondent had expended in filing suit and acquiring medical records. (PE 15a; N.T. 84)

7. Upon request by Respondent, Mr. Rishell issued a check dated December 18, 1985, in the amount of $1,000.00 to the Respondent, for anticipated costs and expenses in retaining a medical expert, and designated thereon for Respondent's escrow account. (PE 15b; N.T. 85)

8. Upon request by Respondent, Mr. Rishell issued a check dated December 31, 1986, in the amount of $500.00, for anticipated costs and expenses in retaining a medical expert, and designated thereon for Respondent's escrow account. (PE 15b; N.T. 85)

9. In about January, 1987, the Rishells moved from New Brighton, Pennsylvania, to Lutz, Florida, and notified Respondent of their new address. (N.T. 80, 88)

10. On April 21, 1987, counsel for Dr. Grumet served supplemental Interrogatories on Respondent as counsel for the Rishells. (PE 21; N.T. 28)

11. By letter dated May 27, 1987, counsel for Dr. Grumet requested that Respondent respond to those Interrogatories by

June 11, 1987. (PE 21; N.T. 28)

12. Respondent did not file an Answer to the Interrogatories by June 11, 1987. (N.T. 30)

13. By Order of Court dated July 10, 1987, the Honorable Stanton Wettick ordered that the supplemental Interrogatories directed to Mr. Rishell be answered within thirty (30) days from the date of the issuance of the Order, or Mr. Rishell would be barred from introducing at the time of trial any and all evidence pertaining to his physical and mental condition. (PE &; N.T. 30-31)

14. Some time between July 10, 1987 and July 15, 1987, Respondent submitted Answers to the supplemental Interrogatories. (N.T. 32)

15. In or about the early summer months of 1989, Respondent telephoned Mr. Rishell and discussed with him questions of a kind similar to those set forth in the Interrogatories. (N.T. 91)

16. Subsequent to his telephone conversation with Respondent, in the early summer months of 1989, Mr. Rishell made numerous attempt to contact Respondent by telephone, without success. (N.T. 92-93)

17. By letter sent to Respondent in May, 1990, Mr. Rishell requested a status report on his case, as well as an accounting of funds he provided Respondent. (N.T. 94)

18. Respondent did not reply to Mr. Rishell's letter of May, 1990. (N.T. 99)

19. Sometime after May 1990, but prior to September, 1990, after he was able to contact Respondent by telephone, Mr. Rishell issued to Respondent Check number 1645 in the amount of $1,700.00 for anticipated costs and expenses in retaining a medical expert. (PE 36; N.T. 100-101)

20. Check number 1645, in the amount of $1,700, was received by Respondent. (N.T. 207)

21. On August 23, 1990, Attorney Paula Koczan, on behalf of Dr. Grumet, served Respondent with a third set of Interrogatories and Requests for Production. (PE 24; PE 41; N.T. 37-38)

22. Respondent did not answer the third set of Interrogatories and Requests for Production, nor did he discuss or review them with Rishells. (N.T. 40, 91)

23. On November 2, 1990, Attorney Koczan mailed to Respondent a copy of a Motion to Compel Discovery, along with a notice that said Motion would be presented to the Court on November 9, 1990. (PE 25; N.T 41)

24. Respondent did not notify the Rishells of, or discuss with them, his receipt of that Motion to Compel Discovery. (N.T. 92, 110-111)

25. On November 9, 1990, Judge Wettick issued an Order of Court which required the Rishells to submit verified Answers to Dr. Grumet's third set of Interrogatories and Requests for Production within fifteen (15) days of the date of the Order, or suffer sanctions. (PE 8; N.T. 45-46)

26. Respondent did not notify the Rishells of, or discuss with them, the issuance of Judge Wettick's November 9, 1990 Order or its ramifications. (N.T. 92, 110-111)

27. Respondent did not comply with Judge Wettick's November 9, 1990 Order.

28. By letter dated November 14, 1990, Mr. Rishell informed Respondent that this was his second written request for information regarding his case, that he had been unable to contact Respondent for the past several months without success, and that he wanted Respondent to advise he and his wife of the status of his representation and provide them with an accounting.

(PE 17, N.T. 111-112)

29. Respondent did not reply to Mr., Rishell's November 14, 1990 letter. (N.T. 114, 251)

30. Between December 1990, and April, 1990, the Rishells attempted to contact Respondent by telephone to determine the status of their case. (N.T. 118-119)

31. Respondent did not return any of their telephone calls. (N.T. 119)

32. On January 25, 1991, Attorney Koczan mailed to Respondent a copy of a Motion for Sanctions, with notice that the Motion would be presented on February 1, 1991. (PE 27; N.T. 50)

33. On February 1, 1991, Judge Wettick issued an Order directing Plaintiffs to comply with his prior Order of Court dated November 9, 1990 within thirty (30) days, and awarding attorney's fees to counsel for Dr. Grumet. (PE 9; N.T. 51)

34. Respondent did not comply with the February 1, 1991 Order of Court. (N.T. 56)

35. Respondent did not inform the Rishells of the February 1, 1991 Order of Court, or discuss with them its ramifications. (N.T. 119)

36. On March 5, 1991, Attorney Koczan mailed to Respondent a copy of a subsequent Motion for Sanctions, with notice that the Motion would be presented to the Court on March 8, 1991. (PE 30; N.T. 56)

37. On March 8, 1991, no one appeared on behalf of the Rishells, and Judge Wettick issued an Order of Court prohibiting them from introducing at the time of trial any expert testimony and any and all medical records, hospital records, or hospital bills. (PE 10; N.T. 56-57)

38. Respondent did not inform the Rishells of the Order of Court issued by Judge Wettick on March 8, 1991, or its ramifications. (N.T. 119)

39. Respondent spoke with Mr. Rishell by telephone in April 1991 and informed him that approximately $1,200 of his money remained in Respondent's escrow account, apologized for not contacting him, and advised him that the case was in jeopardy but not why, and that he wanted to drop the case. (N.T. 119-120, 132)

40. During their April, 1991 telephone conversation, Mr. Rishell told Respondent that he wanted to meet with him to discuss the case. (N.T. 120)

41. During that April, 1991 telephone conversation, Respondent told Mr. Rishell he would travel to Florida during the Memorial Day weekend to meet with them. (N.T. 121)

42. By letter dated May 30, 1991, Respondent informed the Rishells that he was experiencing difficulty in scheduling his trip to Florida, that he had arranged for a flight to Tampa, to arrive on July 13, 1991, and that they should advise him if that was inconvenient. (PE 18; N.T. 122)

43. Shortly after receipt of that letter, Mr. Rishell advised Respondent that the July 13, 1991 meeting date was convenient. (N.T. 130)

44. Respondent did not meet with the Rishells in Florida on July 13, 1991, or at any time thereafter. (N.T. 129)

45. Respondent did not contact the Rishells in any manner to explain his absence from the pre-arranged meeting scheduled for July 13, 1991. (N.T. 130)

46. After July 13, 1991, Respondent did not telephone the Rishell, or otherwise communicate with them about their malpractice action. (N.T. 130-132)

47. On September 3, 1991, Attorney Koczan presented to Judge Horgos a Motion for Summary Judgment on behalf of Dr. Grumet; it was granted on that day. (PE 1; N.T. 60)

48. On September 10, 1991, counsel for defendants in the medical malpractice action filed Praecipes for Entry of Judgment against the Rishells. (PE1)

49. Respondent did not contact the Rishells in any manner to inform them of the Motion for Summary Judgment, the resulting Order of Court, or the Entry of Judgment against them. (N.T. 131-132)

50. Respondent did not provide the Rishells with a full accounting of the monies they paid him. (N.T. 131-132)

51. Respondent has a prior record of discipline consisting of an Informal Admonition administered on November 9, 1992 and a one year and one day Suspension ordered on August 31, 1995. The basis for the Suspension was Respondent's repeated failure to remit $150.00 to a stenographer, which monies he originally received from his client for this purpose.

III. CONCLUSION OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1,3 -(Failing to act with reasonable diligence and promptness in representing a client);

2. RPC 1.4(a) - (Failing to keep a client informed about the status of a matter and failing to promptly comply with reasonable requests for information);

3. RPC 1.4(b) - (Fail;ing to explain a matter to the extent necessary to permit a client to make informed decisions regarding the representation); and

4. RPC 1.15(b) - (Failing to promptly deliver to a client or

third person any funds or other property that a client or third person is entitled to receive and, failing to promptly render a full accounting regarding such property, upon request by a client or third person).

IV. DISCUSSION

This matter is before the Board on a Petition for Discipline filed against Respondent on the basis of his actions in a medical malpractice case brought on behalf of Richard and Ruth Rishell. The record indicates that Respondent began work on the case in 1985 and pursued it diligently on behalf of Richard and Ruth Rishell. He conducted discovery by way of depositions of both the Rishells and defendant doctors. Interrogatories had been submitted and answered by various parties. After that time, he stopped working on the case. He failed to answer a third set of Interrogatories and Requests for Production, and failed to acknowledge receipt of these pleadings or review them with his clients. He failed to appear in court to defend motions filed by the defense as a result of Respondent's inactivity. Sanctions were obtained against Respondent which resulted in prejudice to his clients' case. Respondent failed to account for the disposition of monies supplied to him for expenses, although he was requested to do so by his clients. Respondent's actions violated Rules 1.3, 1.4(a), 1.4(b), and 1.15(b).

The Committee determined that Respondent violated the above Rules; however, it decided that since Respondent was currently on suspension for violations in a separate case, it would not impose a separate discipline. Instead, the Committee recommended that if Respondent is reinstated from the one year and one day suspension, he should serve a six month period of probation and take an ethics course as a sanction for the instant case. The Committee's attempt to craft a considerate sanction is well-meaning, but such sanction is not appropriate under the Rules of Disciplinary Enforcement. In effect, the Committee is conditioning Respondent's discipline in this matter on his future reinstatement.

Two problems arise pertinent to this recommendation. The first issue is that conditional reinstatement is not provided for by the Rules of Disciplinary Enforcement. The Rules do not permit

this because when an attorney is granted reinstatement, he or she has already shown moral fitness, competence and learning in the law and is fit to practice law in Pennsylvania. A requirement of probation or an ethics class after reinstatement negates the previous demonstration of fitness to practice. Also, the language of the Committee's recommendation is such that Respondent may never be sanctions for his violations in the instant case if he decides not to petition for reinstatement or his reinstatement is denied.

The second issue is that the Committee attempted to dovetail discipline in this case with a sanction imposed in a separate and distinct matter. While the Committee appropriately considered Respondent's suspension in In re Anonymous No. 81 DB 93, 29 Pa. D & C 4th 101 (1995) as an aggravating circumstance, it was not appropriate to combine the sanctions. The circumstances of the case in which Respondent was suspended have nothing to do with the facts of the instant case. To make Respondent's reinstatement in that case provisional on receiving probation for this case, even if such a scheme was permitted under the Rules, is not logical. Since the Committee found that Respondent violated Rules of Professional Conduct, it should have recommended separate discipline for his misconduct.

There are several prior cases addressing misconduct similar to that in the instant case. In the case of In re Anonymous No. 24 DB 89, 8 Pa. D & C 4th 207 (1990), an attorney failed to take any action in an estate matter and misrepresented the status of the case to the client. The attorney had a prior history of discipline, including a two year suspension that had been imposed during the pendency of No. 24 DB 89. The Board recommended a one year suspension consecutive to the two year suspension. The Supreme Court affirmed this recommendation. The facts of the cited case are more egregious than the instant case, as Respondent herein proceeded accordingly on the case for five years, then stopped. Also, the attorney in the cited case violated Rules involving misrepresentation and conduct adversely reflecting on his fitness. Respondent herein was not charged with any similar violations. In the case of In re Anonymous No. 128 DB 91, 23 Pa. D & C 4th 360 (1994), an attorney failed to keep the client informed about the case, failed to transfer the file,

failed to provide an accounting, and failed to return the unearned portion of the retainer fee. The attorney had a prior history of discipline consisting of three informal admonitions, one private reprimand, and a six month suspension. After considering these factors, the Board recommended and the Court approved a six month period of suspension. In the case of In re Anonymous No. 47 DB 91, 18 Pa. D & C 4th 418 (1993), an attorney failed to act with diligence in pursuing a case and failed to return the entrusted property after termination of representation. She had a prior history of two private reprimands and one informal admonition. She presented very strong character testimony at her hearing. The Board imposed a private reprimand. The cited case is less serious that the instant case, as the attorney's prior history was less serious.

Review of the case law suggests that many of the case resulting in suspension involve violations of Rule 8.4, which subsections address misrepresentation, dishonesty, conduct prejudicial to the administration of justice, and criminal acts that reflect on the attorney's fitness as a lawyer. A finding of a Rule 8.4 violation demonstrates the presence of more serious misconduct and increases the severity of the resulting disciplinary sanction. The instant case does not involve such misconduct. A case involving violations of Rules 1.3, 1.4(a), 1.4(b), and 1.15(b), with no aggravating circumstances, would normally warrant a less severe sanction than a suspension, perhaps private discipline. Respondent's prior history of a one year and one day suspension and an informal admonition aggravates the circumstances of this case and changes the nature of it.

The totality of the circumstances in this matter warrant a sanction of a public censure. This is an appropriate sanction considering the misconduct involved and Respondent's prior history.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Matthew E. Jackson, Jr., receive a Public Censure from the Supreme Court of Pennsylvania.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

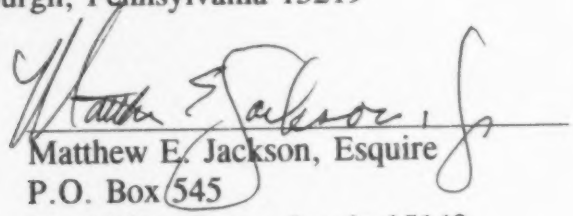
By: William R. Caroselli, Member

Date: September 11, 1997

CERTIFICATE OF SERVICE

This certifies that on 3-16, 1998, a true and correct copy of the within Supplemental Appendix was transmitted to the person listed below, by first class mail, as follows:

Angelea Allen Mitas
Assistant Disciplinary Counsel
Suite 400, Union Trust Building
501 Grant Street
Pittsburgh, Pennsylvania 15219



Matthew E. Jackson, Esquire
P.O. Box 545
Sewickley, Pennsylvania 15143
(412) 741-1898